The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BERNARD KRAEUTLER

MAILED
MAY 12 2005
U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2005-0073
Application No. 09/720,082

HEARD: May 4, 2005

Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Bernard Kraeutler appeals from the final rejection (mailed May 9, 2003) of claims 5 through 9. Claims 3 and 4, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The invention relates to a multi-functional bracket for use with so-called "goods-handling doors."[1] Representative claim 8 reads as follows:[2]

> 8. A unitary multi-function bracket for a goods-handling door, said bracket comprising:
> a face branch for fixing the bracket to a wall, wherein said face branch includes at least one hole therethrough;
> means for supporting a bearing of a rotary shaft; and
> a tab for fixing the bracket to a slideway, wherein said tab includes at least one hole therethrough.

THE REJECTIONS

Claims 7 through 9 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,655,586 to Cattaneo.

[1] The appellant's specification states that "[t]he term 'goods-handling doors' is used to designate doors installed in warehouses, factories, stores, sheds, etc. to make communication possible between different volumes or with the outside, and to provide temperature and noise insulation between said volumes or relative to the outside" (page 1).

[2] Dependent claim 9 further defines the bracket recited in parent claim 8 as comprising "at least one element chosen from the group constituted by" At the oral hearing, the appellant's counsel indicated that the "constituted by" language was intended to be open-ended so as to encompass within the recited group elements other than those expressly listed in the claim. Upon return of the application to the technology center, the examiner should consider whether this recitation amounts to an improper Markush group (see MPEP § 2173.05(h)) which renders the scope of claim 9 indefinite.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cattaneo.

Attention is directed to the brief (filed December 9, 2003) and answer (mailed May 4, 2004) for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

As framed and argued by the appellant, the dispositive issue in the appeal is whether Cattaneo teaches or would have suggested a bracket responsive to the recitation in independent claim 8 of the "means for supporting a bearing of a rotary shaft."

The appellant correctly points out that "[t]his element is set forth as a function without any specific structure for performing that function and, therefore, is subject to interpretation under § 112, 6th paragraph" (brief, page 4). As such, it must be construed as covering the corresponding structure, material, or acts described in the specification and equivalents thereof.[3] In re Donaldson Co., 16 F.3d 1189, 1193,

[3] The structure described in the appellant's specification which corresponds to the recited "means for supporting a bearing of a rotary shaft" consists of a reinforcement 24, 124 on the bracket which forms a seat for receiving a ball or roller bearing for a rolling-up shaft (see pages 5 and 6 in the specification

(continued...)

29 USPQ2d 1845, 1849 (Fed. Cir. 1994). Thus, for a means-plus-function limitation to read on a device, the device must employ means which (1) is identical or equivalent to the structure, material, or acts described in the specification and (2) performs the identical function specified in the claim. King Instrument Corp. v. Perego, 65 F.3d 941, 945, 36 USPQ2d 1129, 1131-32 (Fed. Cir. 1995).

The appellant contends that the appealed rejections are unsound because Cattaneo does not teach or suggest any structure which performs the function specified in claim 8, i.e., "supporting a bearing of a rotary shaft." The examiner, on the other hand, submits that "[t]he centrally located cylindrical fixing hole as disclosed and illustrated in [F]igure 1 of Cattaneo is structure which supports a bearing shaft of a rolling shutter inasmuch as this is the function per se of the support bracket" (answer, page 3-4).

Figure 1 in the Cattaneo reference illustrates the flank of a rolling shutter box. As shown, the flank 1, which has a quadrangular configuration, comprises a base 3, fixing holes (unnumbered), and a projecting tang 4 on the rear end 2 of the

[3](...continued)
and Figures 2 through 5 in the drawings).

base for connection to a stem 7 which engages a rolling shutter side guide 8 (see column 2, line 43, through column 3, line 30). Figure 1 also depicts at the center of the flank a pair of concentric circles which are not described in the underlying specification. Presumably, these circles constitute the basis for the examiner's finding that the flank comprises a centrally located cylindrical fixing hole for supporting a bearing shaft of a rolling shutter. The fair teachings of Cattaneo, however, provide no factual support for this finding. Cattaneo's disclosure of the constructional details of the rolling shutter arrangement referred to therein is, at best, sketchy and ambiguous. The examiner's position that the circles shown in Figure 1 embody a bearing support is purely conjectural and hence untenable. In short, Cattaneo does not teach, and would not have suggested, a unitary multi-function bracket for a goods-handling door having a "means for supporting a bearing of a rotary shaft" as set forth in claim 8.

Accordingly we shall not sustain the standing 35 U.S.C. § 102(e) rejection of independent claim 8, and dependent claims 7 and 9, as being anticipated by Cattaneo, or the standing 35 U.S.C. § 103(a) rejection of dependent claims 5 and 6 as being unpatentable over Cattaneo.

SUMMARY

The decision of the examiner to reject claims 5 through 9 is reversed.

REVERSED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
)
)
)
JOHN P. MCQUADE) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
)
)
)
JEFFREY V. NASE)
Administrative Patent Judge)

JPM/kis

SUGHRUE, MION, ZINN, MACPEAK & SEAS
SUITE 800
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037-3202